XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

आदेश पत्रक

मामला क्रमांक ...Cr.A.864.... सन् 2000

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 864 OF 2000

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

Appellant : Goutar Gond, aged about 35 years, S/o Samaylal Gond, R/o Samnapur, P.S.Rengakhar, Distt. Rajnandgaon (M.P.)

Versus

Respondent : State of Madhya Pradesh

Present:
Mr. Vijay Deshmukh, counsel for the appellant.
Mr. C.R. Sahu, Panel Lawyer for the State/respondent.

ORAL JUDGMENT
(16th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 25th February 2000 passed by Additional Sessions Judge, Khairagarh in Sessions Trial No. 139/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 201 of the Indian Penal Code, sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months,

(पीछे देखिये)

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to undergo R.I. for seven years and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months, respectively. Co-accused Jethudas died during the pendency of the trial, therefore, case against him was abated.

2. Case of the prosecution, in brief, is that prior to 12.7.1997 accused used to doubt the fidelity of his wife Jhuniyabai that she was having illicit relationship with Balsingh Gond of the same village and accused was aware of the above fact, therefore, on 12.7.1997 when he returned after working in the agriculture field, he started beating his wife and thereafter committed her murder by pressing the neck. Merg intimation (Ex.P.12) was given by Haresingh Gond, village Sarpanch. Station House Officer, Police Station Rengakhar after receiving this report left for the place of occurrence and prepared the inquest (Ex.P/13) on the body of Jhuniyabai. Thereafter, body of deceased Jhuniyabai was sent for postmortem examination to Primary Health Centre, Bodla under Ex.P/13 where Dr. M.L. Vachkar (PW-7) conducted postmortem and prepared the report Ex.P/7, in which he opined that cause of death was ~~due to~~ he asphyxia due to some external obstruction to trachea and neck and injury to neck, nature of death may be homicidal. Panchanama (Ex.P/9) was prepared by the investigating officer. Based on the investigation papers, the First Information Report (Ex.P/8) was registered for commission of the offence under Sections 302 & 201 of the IPC. After investigation

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charge sheet was filed in the Court of Chief Judicial Magistrate, Kawardha, who in turn committed the case to the Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge, Khairagarh received the case on transfer for trial.

4. Prosecution examined 10 witnesses at the trial in order to establish the charge against the accused/appellant. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Mr. Vijay Deshmukh, learned counsel appearing on behalf of accused/appellant and Mr. C.R. Sahu, learned P.L. for the State/respondent.

7. Mr. Deshmukh argued that in this case all the witnesses have turned hostile and there is nothing on record to show that accused was the person responsible for committing murder of his wife Jhuniyabai. He further argued that in fact on the fateful day accused had gone to his agriculture field in the morning and there no evidence to suggest that the accused was present in the house

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at the time of commission of offence and he committed the murder of his wife.

8. On the other hand, Mr. Sahu supported impugned judgment of the trial Court.

9. Having heard counsel for the respective parties, we have perused the evidence on record. In this case all the witnesses have turned hostile. PW-1 Bhagwantin Bai, daughter of the accused and the deceased has also turned hostile and stated in her cross-examination that when his father returned from agriculture field, he enquired about her mother, then she informed him that she is sleeping. She has stated that it is incorrect to say that his father after hearing that her mother is sleeping, entered the room and started beating her mother. She has further stated that it is incorrect to say that seeing her father attacking her mother, she became frightened and went outside weeping. She has further stated in paragraph 11 of her cross-examination that on the fateful day when she returned after grazing the goats in the forest, she saw that Balsingh was coming out of their house, on which she asked her mother as to why Balsingh came to their house and told her mother that she will disclose this fact to her father, therefore, her mother being frightened consumed poison. Thereafter, her mother started writhing. All other witnesses including PW-1 Bhagwantin Bai, have turned hostile, therefore, the prosecution

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has not been able to establish the fact by leading cogent or legal evidence as to how deceased sustained the injuries on the neck nor the prosecution has been able to establish the fact that accused was in the house when deceased sustained the injuries. Moreover, it has come on record in the evidence of PW-1 Bhagwantin Bai that on the day when her father was at agriculture field, Baldevsingh came to their house and the accused was suspecting the illicit relations of his wife and Baldevsingh, therefore, we are of the considered opinion that the prosecution has utterly failed to connect the accused with the crime in question and accordingly the accused is entitled for benefit of doubt and as such, his conviction for the offence under Section 302 of the IPC, cannot be sustained as the same is not based on any legal, clinching circumstantial evidence.

10. In the result, the appeal is allowed. Accused/appellant is acquitted of the charge under Section 302 of the IPC and sentence imposed upon him under that section is set aside. It is stated that the accused/appellant is in detention since 1997, therefore, he is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

(पीछे देखिये)